

David I. Schoen
Attorney at Law
2800 Zelda Road, Suite 100-6
Montgomery, Alabama 36106
Tel. 917-941-7952; Email: Schoenlawfirm@gmail.com

August 26, 2024

Honorable Jennifer H. Rearden
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007-1312 Re: *Borgen v. Elezzi, et al.*; Case No. 22-cv-4105 (JHR)

* Via ECF *

Dear Judge Rearden:

I represent the Plaintiff, Joseph Borgen, in the above-referenced case.

This case was filed on May 19, 2022 [ECF# 1]. It arises from the brutal antisemitic-driven beating of Mr. Borgen by the Defendants.

On August 18, 2022, counsel for Defendant Faisal Elezzi entered his appearance in the case and filed a motion to stay all proceedings as to his client, pending the outcome of the related criminal proceedings flowing from the arrests of the Defendants and the hate crime prosecutions brought against them for their conduct that is at issue in this lawsuit [ECF## 20, 21]. The motion for a stay as to Elezzi was granted on August 25, 2022 [ECF# 24] and a stay was imposed *sua sponte* as to all Defendants on December 5, 2022, to allow time for the hate crime criminal charges against all Defendants [ECF# 31]. That Order also denied motions for the entry of default against Defendants Awahdeh, Othman, and Musa without prejudice to renew them once the stay was lifted [*Id.*].

On February 20, 2024, after each Defendant was convicted and sentenced for the hate crimes committed against Mr. Borgen, the Court lifted the stay and expressly permitted the filing of the First Amended Complaint and renewed default motions [ECF# 36].

On February 27, 2024, the First Amended Complaint was filed and was served on Mr. Elezzi and his attorney through the ECF system [ECF# 37]. To date, some six months later, Mr. Elezzi has failed to in any way respond to the First Amended Complaint, either through counsel who has appeared in this case, or otherwise. Accordingly, on August 22, 2024, Mr. Borgen filed a motion for entry of default as to Defendant Elezzi, with all appropriate accompanying paperwork [ECF# 43].

Counsel has now reached out to the undersigned, characterizing his failure to in any way respond to the First Amended Complaint filed six months ago, as an “oversight” and has asked that Mr. Borgen “withdraw” his motion for entry of default as to Mr. Elezzi, which he would then follow with the immediate filing of an Answer identical to the original Answer he filed [See ECF#20].

There is no question that the entry of default for the failure to respond in any way to the filing and service of an Amended Complaint is appropriate. *Joseph v. Nature*, 2020 U.S. Dist. LEXIS 194252, *1 (S.D.N.Y., October 19, 2020) (Plaintiff is entitled to an entry of default if he shows that Defendants were "properly served with the Amended Complaint, and subsequently failed to timely respond.") (citations omitted).

However, rather than engage in motion practice that would, in practical terms, undermine the efficiencies of a default and default judgment, Plaintiff does not object to having Elezzi file his Answer to the Amended Complaint and moving forward with the case as to Elezzi.

Additionally, it might best serve the public interest to have all relevant facts about this brutal hate crime aired through this case, whether by summary judgment or otherwise.¹

I did not believe it is appropriate to move to withdraw the motion for entry of default as to Elezzi because the Court has an independent interest in proceeding in orderly fashion, ensuring timely compliance with the Federal Rules of Civil Procedure, and in controlling its docket; however, if the Court thinks it appropriate to proceed, rather than entering a default as to Elezzi, with his identical Answer to be filed immediately, Mr. Borgen does not object.

In any event, however, Mr. Borgen intends to pursue the entry of a default and default judgment as to each other Defendant. Each has failed to in any way respond to the Complaint or First Amended Complaint, notwithstanding the time and expense incurred in properly serving each of them.

I thank Your Honor for the Court's consideration.

Respectfully,

/s/ David I. Schoen
 David I. Schoen
 Counsel for the Plaintiff

cc: Counsel of Record via ECF;
 Defendants Musa, Othman/Othaman, and Othman by mail

¹ See article text and accompanying video at
<https://nypost.com/2023/10/10/man-sentenced-to-jail-in-nyc-hate-crime-beating-of-jewish-man/>
https://canarymission.org/individual/Faisal_Elezzi